STATE OF CALIFORNIA – DEPARTMENT OF CONSUMER AFFAIRS
CALIFORNIA ARCHITECTS BOARD

INITIAL STATEMENT OF REASONS

Hearing Date: **October 10, 2007**

Subject Matter of Proposed Regulations: Architectural Business Names and Association

Sections Affected: Title 16, California Code of Regulations, Sections 134 and 135

SPECIFIC PURPOSE

§ 134. Architectural Business Names

This proposal removes and replaces the existing language of California Code of Regulations (CCR) section 134 (Architectural Business Names) in the Architects Practice Act. The new language is intended to achieve a more equitable application of the existing statutory title protections in the Architects Practice Act while reinforcing controls over misrepresentation and unlicensed practice. The proposed change coupled with the recently enacted Business and Professions Code (BPC) section 5558 will provide consumers better information about licensees when seeking architectural services.

Under existing law, only persons licensed by the Board as architects are permitted to use the terms "architect," "architecture," or "architectural" in their business name and in any advertising and/or business devices. However, current regulatory language places additional title use restrictions on licensees that are cumbersome, duplicative and are not discouraging or curtailing false advertising or misrepresentation by unlicensed persons, as was originally intended.

The proposed regulatory language clarifies current statutory provisions on the use of the protected title and related terms and better defines the position of the architect within a business entity. It also clarifies and reinforces the statutory requirements that any person or business entity offering and/or providing architects' professional services must have an architect in control of all such services. Definitions of terms are provided that clarify the regulations' linkage with existing statutory provisions.

Background: When CCR section 134 was adopted in 1988, it was intended to address the issues of proper representation of license status and qualifications to practice, organization and naming of architectural business entities, and their advertising. This was done in a simpler context for architectural practice and for communications. Now, the language used in this regulation is not flexible enough to address these issues in the ever-changing practice of architecture and the advancement in electronic communications. While remaining soundly based on the statutes governing the titles and the practice of architecture, the proposed regulatory change uses performance-based language making it more open and responsive to the issues important to consumers and practitioners. These proposed changes are profoundly supported by legislative enactment of BPC section 5558 in 2002, which provides the consumer of architectural services an infinitely more accurate, current, and detailed licensee reference than was ever available (or possible) through the standards and requirements of the existing CCR section 134.

§ 135. Association

This proposal repeals CCR section 135 (Association) from the Architects Practice Act. This regulation has not accomplished its originally intended purpose and has in fact created an opportunity for misrepresentation by certain unlicensed persons in illegally offering and providing architectural services to California consumers.

Existing regulation defines a procedure for unlicensed persons and licensees to collaborate for the purpose of "jointly offering" architectural services. Problematic issues arise with the existing regulation via a "joint offer" of services by unlicensed persons intending to practice architecture without a license or to misrepresent themselves as being qualified to practice as an architect. The issues manifest themselves in two distinct scenarios as follows:

1. The offer is made to provide architectural services on a non-exempt project type. While the regulation requires the parties to have a written agreement of association prior to making their offer, the architect is not required to file a notice of the association with the Board until "…prior to engaging in the design phase…" of the project. This language has opened the door for unlicensed persons to argue that an architect is only necessary or required during the construction document phase of a project to provide the "stamp and signature" required for the issuance of a building permit. The unlicensed person provides all the design services and calls in the "associated architect" to stamp and sign the documents. Often times the participation and name of the associated architect is unknown to the consumer. By the definition of the practice of architecture and the listing of services that an architect may provide, the knowledge and skills of an architect are needed far earlier in a project than the construction document phase. This scenario constitutes misrepresentation and possible practice without a license by the unlicensed person, as well as the possibility of aiding and abetting this unlicensed activity by an unsuspecting licensee.

2. The offer is made to provide architectural services on an exempt project type, as defined in BPC sections 5537 and 5538. While some attempt to argue that the current regulation does not require an architect to be responsible for instruments of service on projects that are defined in statute as exempt, the basic statutes governing the practice of architecture say that only architects can provide architectural services and makes no distinction between exempt or non-exempt project types. The unlicensed person proceeds to provide the architectural design services on the exempt project without the "associated" architect's involvement while the consumer believes the work is being provided by an architect. This constitutes misrepresentation and possible unlicensed practice by the unlicensed person, as well as potentially aiding and abetting by an unsuspecting licensee. (This scenario is especially troublesome with "associations" that are filed as ongoing.)

Background: CCR 135 was adopted along with CCR 134 to address issues raised by the elimination of the "building designer" registration provisions of the Architects Practice Act. Its intention was to facilitate and define how an unlicensed person and an architect could legitimately collaborate to provide architectural services without forming a formal business entity. However, due to ambiguity in the language, confusion has been created on the issue of "jointly offering" services as an architect and the statutory definition of the practice of architecture including "offering." The ambiguity was further heightened by language requiring Board notification of the relationship "…prior to engaging in the

design phase…" and for the licensee being "…responsible for the preparation of instruments of service…required by law…" This opened the door for unlicensed persons intending to misrepresent themselves and to practice without a license to argue that an architect was only necessary or required during a project's construction document phase (that culminates in the issuance of a building permit).

FACTUAL BASIS

§ 134. Architectural Business Names

Architects licensed by the Board are the only persons permitted under the Architects Practice Act to use the statutorily protected terms "architect," "architecture" or "architectural." However, the current regulatory language places title restrictions on licensees in order to discourage or curtail false advertising and misrepresentation of qualifications by certain unlicensed persons. Consumer complaints specifically show that the regulation has not performed as intended.

The Architects Practice Act is a "title" act and a "practice" act. The current regulation is focused on the statutory "title" issues in architectural business names and advertising, but it does not clearly address or link to the statutory "practice" aspects related to use or misuse of the protected title and similar terms. The proposed language clarifies current statutory title and practice provisions of the Architects Practice Act by clearly defining that:

- Only architects and business entities wherein an architect is the owner, a part-owner, an officer, or an employee in charge of the architects' professional services may use the protected terms in their business entity names and advertising devices, and
- When such business entities advertise and/or represent by use of the protected terms that they are architects, or qualified to provide architects' professional services, then an architect must be in responsible control of all the professional services an architect may provide.

The recent passage of Assembly Bill (AB) 1144 (Chapter 313 Statutes of 2001) and the implementation of its BPC section 5558 requires that licensees provide the Board with the name and address of the business entity through which they provide architectural services. Now the Board can provide California consumers with a database that correlates licensees and business entities. This is much more effective than the duplicative provisions of the existing regulation for the consumer and less cumbersome for the licensee.

§ 135. Association

Existing regulatory language defines a procedure for unlicensed persons and licensees to collaborate or "associate" for the purpose of jointly offering architectural services. Even though the parties are required to execute and date a written agreement prior to "jointly offering" architectural services, reporting the "association of agreement" is not required until "…prior to engaging in the design phase of the project." The current regulation requires that the architect has agreed to be responsible only for documents and services related to projects that are "…not exempted…" from the Architects Practice Act. These facts coupled with the gap between the "offer" of services and the commencement of a

project "design phase" has presented a real opportunity for misrepresentation by unlicensed persons intent on representing themselves to consumers as architects or as qualified to provide architects' professional services on any and all project types. The current regulation does not provide the degree of consumer protection from misrepresentation or unlicensed practice as was originally intended.

Consumer complaints have shown that certain unlicensed persons will "offer" to provide architects' professional design services to consumers on knowingly "exempt" project types under the guise of having an association with an architect. As allowed under BPC section 5537, the unlicensed person will then provide design services on this "exempt" project type; however, the associated architect is not notified of the project and/or never involved in the project. While this activity complies with the current requirements of CCR 135 and the provisions for "exempt" project types in BPC section 5537, it is in direct violation of BPC sections 5500.1 and 5536, as follows:

- Under existing statute, BPC section 5500.1, the definition of the practice of architecture includes the act of "offering" to provide the professional services of an architect. The statutory intent was to assure California consumers that if an architect's professional services were offered to them, such services would in fact, be performed by or under the responsible control of an architect.
- Under existing statute, BPC section 5536, it is a misdemeanor for any person not licensed as an architect to represent or indicate to the public that "…he or she is an architect or…is qualified to engage in the practice of architecture…"

Repeal of this regulation is proposed for the following reasons: 1) proposed changes to CCR section 134 more clearly define statutory provisions for the practice of architecture including the offering and providing of an architect's professional services; 2) the current regulation does not provide the consumer protection from misrepresentation or unlicensed practice, as was originally intended; and 3) the current regulation provides a path to circumvent existing statutory provisions governing the practice of architecture.

UNDERLYING DATA: **None**

BUSINESS IMPACT

§ 134. Architectural Business Names

For the majority of licensees in the State, this regulatory proposal will have no significant adverse economic impact on their businesses. In fact, there can be cost savings for the business entities in advertising, in phone directory listings, in initial printing of business cards, stationery and drawing title blocks by eliminating the cost to change all these business devices upon any change in the "qualifying" architect. The proposed changes maintain the current requirement that the architect who "qualifies" the business entity to use the protected terms and to practice must be at least the owner, a part-owner, an officer or an employee of the entity.

§ 135. Association

This regulatory proposal may have some adverse economic impact on unlicensed persons' businesses seeking to provide architectural services when they do not have an architect who is at least part-owner, an officer, or an employee of the entity.

SPECIFIC TECHNOLOGIES OR EQUIPMENT

This regulatory proposal does not mandate the use of specific technologies or equipment.

CONSIDERATION OF ALTERNATIVES

§ 134. Architectural Business Names

The Board's 2000 Strategic Plan charged the Regulatory and Enforcement Committee (REC) with developing a recommendation regarding firm registration and advertising. The REC initially supported the concept of having architectural businesses register their business name with the Board as a way to regulate unlicensed practice through identification of businesses that were qualified to practice. The American Institute of Architects, California Council (AIACC) proposed a statutory change in 2000 to provide an architectural firm registry and introduced it as AB 1916 (Bates). This proposed legislation would have allowed the Board to adopt regulations requiring architectural firms to register with the Board. The bill passed through both houses of the legislature, but on September 16, 2000, Governor Davis vetoed the bill based upon it creating an unnecessary additional layer of registration.

With this legislative history, the REC further investigated the issues of architectural business names, advertising, and unlicensed practice. The REC determined that a three-element approach was required to effectively address the issues. The first element was to propose and implement a statutory requirement (similar to the existing CCR section 104) for licensees to provide the Board with the name and address of the business entity through which they provide architectural services. The resulting BPC section 5558 is now in place and the Board implemented the provision by mailing an information request form to licensees in November 2002 and has maintained the business entity information related to the licensees. The second element is the proposed change to the regulatory language in CCR section 134 and the third is the proposed repeal of CCR section 135.

§ 135. Association

The Board has considered rewriting the language of CCR section 135 (Association) to better comply with the original intent of the regulation. When tested against existing statutory requirements for the practice of architecture and for "exempt" project types, no reasonable alternative language could be developed. Because the proposed changes in CCR section 134 (Architectural Business Names) very clearly define who may offer and provide architectural services with language that directly supports existing statutes governing the practice of architecture, no other regulatory models appear viable.